

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00124 COA**

**PATRICK HIGGINS A/K/A PATRICK J. HIGGINS
A/K/A PATRICK JOSEPH HIGGINS**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/19/94
TRIAL JUDGE:	HON. ISADORE W. PATRICK, JR.
COURT FROM WHICH APPEALED:	WARREN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID P. OLIVER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	GILMORE G. MARTIN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	GUILTY OF THREE COUNTS OF FELONY BAD CHECK: SENTENCED TO 3 YEARS ON EACH COUNT TO BE SERVED CONSECUTIVELY TO THE OTHER COUNTS FOR A TOTAL OF 9 YEARS, SUSPENDED UPON COMPLETION OF PROGRAM AT JACKSON COUNTY RESTITUTION CENTER
DISPOSITION:	REVERSED AND APPELLANT DISCHARGED -3/10/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

COLEMAN, J., FOR THE COURT:

In the Circuit Court of Warren County, a jury found the appellant, Patrick Higgins, guilty of three counts of issuing and delivering "bad checks" in violation of Section 97-19-55 of the Mississippi Code of 1972.⁽¹⁾ Because the amounts of each of the three checks exceeded \$100, the trial judge sentenced Higgins to serve a term of three years on each count pursuant to the provisions of Section 97-19-67 of the Mississippi Code of 1972.⁽²⁾ The trial judge ordered that Higgins serve these three sentences consecutively for a total of nine years, "suspended upon his completion of the program at the Jackson County Restitution Center." The court also levied a \$1000 fine for each count of felony bad check for a total of \$3000, but it suspended Higgins's payment of these fines on the condition that he pay Southern Lock & Key the sum of \$605.05, which represented the total of other checks drawn on the account of Delta Glass Repair, Inc., in what was then the First National Bank of Vicksburg, but is now Trustmark National Bank. As a part of Higgins's punishment, the trial court ordered him to make full restitution to Southern Lock and Supply Company. We reverse and render the trial court's judgment and sentencing order because we find that the evidence was insufficient to support the jury's verdict of Higgins's guilt of those three counts.

I. FACTS

We recite the facts in the light most favorable to the evidence which the State adduced for the jury's consideration. Southern Lock and Supply Company (Southern), a wholesale distributor of security products such as locks, keys, and safe door closers, is located in Pinellas Park, Florida. Delta Glass Repair, Inc., (Delta) was a Mississippi corporation which was domiciled in Vicksburg, Mississippi. The appellant, Patrick Higgins, served as president and secretary of Delta, and Lynn Higgins, to whom Higgins was once married, served as Delta's treasurer. Southern maintained an open account for Delta. Delta purchased merchandise from Southern on its account, but when Delta experienced difficulty in paying its account, Southern began to send merchandise by United Parcel Service (UPS) cash on delivery. The address to which Southern sent each of Delta's orders was 106 Linda Drive, Vicksburg, Mississippi 39180, which was the address of Higgins's residence. UPS would return to Southern by mail Delta's checks which its delivery persons received when they made C.O.D. deliveries at that address.

Delta maintained a checking account in First National Bank of Vicksburg (FNBV), now Trustmark National Bank. Southern received Delta's check no. 15154 for \$434.01, dated August 20, 1993, in payment of an order which it had sent Delta via UPS, but FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front. Southern next received Delta's check no. 15155 for \$1,326.21, dated August 26, 1993, in payment of an order which it had sent Delta via UPS, but again FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front. Finally, Southern received Delta's check no. 15156 for \$1,313.84, dated August 27, 1993, in payment of an order which it had sent Delta via UPS, but for the third time, FNBV returned this check to Southern with "ACCOUNT CLOSED" stamped on its front.

Joan Hart, Southern's credit manager in Pinellas Park, Florida, called Higgins about these checks which FNBV had returned, and Higgins told her that she could re-deposit them. When the checks were again returned by FNBV, Higgins told Hart that he would send a cashier's check to cover them. Higgins sent one cashier's check in the amount of \$900 to Southern, but this amount paid for only two checks which FNBV returned and left a balance of \$16.82. Southern sent Delta a check in the amount of \$16.82 to refund this balance. The three bad checks for which Higgins was indicted did

not include these two checks which were paid from the proceeds of this \$900 cashier's check.

After the remaining three checks were not paid, Ms. Hart contacted the district attorney's office in Vicksburg and talked with Andrea Hunter in the bad check division of that office. Ms. Hunter sent Ms. Hart some forms entitled "15 Day Legal Notice Letters." Ms. Hart completed three of these forms, one for each of the three checks which FNBV had returned, and mailed them, certified mail, return receipt requested to "Delta Glass Repair, Inc., P. O. Box 820651, Vicksburg, MS 39182." These three letters, which were addressed to "Delta Glass Repair, Inc., 106 Linda Dr., Vicksburg, MS 39180,"⁽³⁾ advised the recipient that "you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check . . . Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument . . . to the proper authorities for criminal prosecution." Section 97-19-57 of the Mississippi Code of 1972 requires that this notice be delivered to the accused prior to initiating criminal charges against the maker or drawer of the bad check. Southern received the return receipt for the delivery to Delta Glass Repair, Inc., which indicated that the letters had been delivered on September 28, 1993. The signature on the return receipt was hardly a scrawl, and the State made no effort to identify it as that of Higgins.

After Southern received the return receipt, Ms. Hart received a telephone call from Higgins, who offered to return some merchandise to trade for "some of the money of the checks," but Ms. Hart declined Higgins's offer because she "would have no way of knowing" whether the merchandise had come from Southern because she had never seen it. Ms. Hart received no further response from Higgins, so she notified Andrea Hunter with the district attorney's office that the three checks for which Higgins was later indicted had not been paid.

II. TRIAL

After several conversations with Higgins or his attorney, Ms. Hunter arranged for a warrant to issue for Higgins's arrest on the three checks for which the grand jury subsequently indicted him in Warren County. Higgins's trial ensued on the three-count indictment. The State called three witnesses, who were Joan Hart, Southern's credit manager; James E. Stirgus, Jr., Assistant Vice President and Security Officer for what was FNBV but is now Trustmark Bank; and Andrea Hunter, the Victims' Assistance Coordinator for the office of the district attorney, who also worked in the worthless check unit of that office. Ms. Hart's testimony on direct examination by the State was consistent with our recitation of the facts. Of interest to this Court is the following cross-examination by Higgins:⁽⁴⁾

Q. Have you ever seen the defendant before today in your life?

A. This is my first time.

. . . .

Q. And do you have any knowledge as to who signed the checks?

A. No, sir. I do not.

Q. Do you have any knowledge as to who signed the green return receipt post card?

A. No, sir. I do not.

....

Q. And you have no personal knowledge of who signed that check?

A. No, Sir. I do not.

....

Q. What is my name?

A. Patrick Higgins.

Q. Do you have any personal knowledge of that, other than I'm the defendant in this action?

A. No, that's all.

Q. So you don't know if I'm Patrick Higgins, Sr., or Patrick Higgins, Jr.?

A. That's correct.

Q. Or even if I'm Patrick Higgins?

A. That's correct.

Q. You didn't see me write the checks?

A. No, sir. I did not.

Q. You didn't see the person -- whoever wrote the checks -- write the checks?

A. Right.

Q. And you didn't see anybody hand those checks to anybody?

A. That's correct.

A portion of the record pertaining to pre-trial motions indicates that Higgins had a four-year-old son named Patrick Higgins, Jr. The record further indicates that Higgins had listed his four-year-old son as the vice-president of Delta.

The State's second witness, James E. Stirus, testified about Delta's commercial checking account with FNBV. He established that the account was opened on "9-24 of '92, 1992," and that it was closed "8-27-, 1993." Stirus explained that the bank had closed the account because "[t]he account was non-sufficient funds, and we closed it because the account was in overdraft." The amount of the overdraft deficit was \$1,564.58. He then testified that the bank stamped the three checks for which Higgins had been indicted "Account closed" and sent them back to Southern because FNBV would not pay the checks. As an exhibit to Stirus's testimony, the State introduced a copy of Delta's corporate resolution to open up a checking account. The resolution stated that Higgins as president and secretary; his wife, Lynn Higgins, as treasurer; and Patrick Higgins, Jr., his four-year-old son, as

vice-president, were authorized to sign checks drawn on Delta's commercial checking account.

On cross-examination, Stirgus answered the following questions by Higgins as follows:

Q. Okay. Do you know who wrote those checks?

A. I have no idea.

Q. Do you know who sent those checks?

A. Do I know who sent them?

Q. Yes.

A. No, sir.

Q. Do you know where they were written?

A. No, sir.

Q. Do you know what they were used in payment for?

A. No, sir.

The State's third and last witness was Andrea Hunter, who testified about her role in providing Ms. Hart with the necessary fifteen-day notices to mail about the bad checks and about her two telephone conversations with Higgins, the first of which occurred when Higgins was in the presence of the attorney who was then representing him. She then explained the procedure to collect bad checks which the office of the district attorney followed. Included in her explanation was the filing of criminal charges if the accused did not pay the checks.

As with the first two witnesses for the State, we quote the following excerpts from Higgins's cross-examination of Ms. Hunter:

Q. Is the signature, the signature of Patrick Higgins, Jr., or Patrick Higgins, Sr.?

A. Patrick Higgins--well, I don't know. It's kind of hard to read.

Q. Do you have any personal knowledge as to who signed those checks?

A. You did.

Q. Did you see me sign those checks?

A. No. I did not see you sign those checks.

Q. Did I ever tell you I signed those checks?

A. You never told me you didn't. I mean--

Q. Did I ever tell you that I signed those checks?

A. Not that I remember.

Q. So the truth of the matter is you don't know who wrote those checks, or who signed them--personal knowledge?

A. I did not see you write the checks. No.

. . . .

Q. Did you see somebody write those checks?

A. No.

. . . .

Q. How do you know whose signature that is? You testified that you have personal knowledge of the signature. How do you know whose signature that is?

A. Number one, you never told me that it wasn't your signature.

Q. Excuse me. Please, refer to the defendant as "the defendant."

A. The defendant never told me that it wasn't his signature. The defendant is the person who is the president of Delta Glass. I don't know how to answer that question.

. . . .

Q. You didn't see anybody write those checks in August? You never saw those checks before February of '94?

A. No.

Q. So you have no idea who issued the checks, personal knowledge?

A. Other than the conversations that you and I had concerning you trying to take care of these checks, no, I did not see you write them.

Q. And you spoke to Mr. Higgins as a representative of Delta Glass Repair; is that correct?

A. Yes, sir.

Q. How do you know that the defendant is the president of Delta Glass?

A. Because he said so.

Q. He said it to you?

A. Yes, in my presence.

On re-cross examination, which the trial judge allowed because the State asked Ms. Hunter about whether she had personally met Higgins, Higgins again questioned her about how she knew the

checks had been written in Vicksburg. The record reflects the following:

Q. I have one last question. On these three checks that you have in front of you, how do you have personal knowledge of where those checks were written?

A. Where they were written?

Q. Yes.

A. Because it was COD -- the merchandise was --

Q. This is personal knowledge that you have. You saw them written in Vicksburg, Mississippi; is that correct?

A. No. I said I did not see you write those checks.

The State rested after Ms. Hunter testified, and Higgins then moved for a directed verdict "based on the fact that the State had not introduced enough evidence to sustain their burden of guilt beyond a reasonable doubt" After Higgins's very brief argument on the motion for directed verdict, the trial judge opined as follows:

These checks were dishonored as being closed account checks. They were not honored. A fifteen-day notice was issued by Southern Lock to the corporation of Delta Glass with the address given. Conversations were had with Mr. Higgins, the defendant, as testified to by Ms. Hart about the said checks. The inferences that can be drawn on this and also *the statute puts upon the defendant the presumption that* the said checks were indeed written in the State that the bank was drawn on; and that *the checks were indeed written by the defendant*; and that the presumption that the checks were written with the intent to defraud. That, however, is a rebuttable presumption. With that, the Court finds that there is prima facie evidence presented, sufficient prima facie evidence presented, to go forward on three counts of felony bad checks against the defendant, Patrick Higgins.

(emphasis added). Higgins rested after the trial judge denied his motion for directed verdict. Higgins submitted a peremptory instruction to find him not guilty, which the trial judge refused. In his motion for JNOV or, alternatively, a new trial, Higgins included the following reasons for granting him a new trial:

2. The Court erred in failing to grant the motion for directed verdict at the close of the State's case.

3. The Court erred in failing to grant a peremptory instruction to find the defendant not guilty.

. . . .

8. The State failed to prove the defendant guilty beyond a reasonable doubt, as required by law.

The trial judge denied Higgins's motion for JNOV or, alternatively, a new trial, and he then appealed the trial court's judgment of his guilt and sentencing to the Mississippi Supreme Court, which then diverted this case to this Court.

III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUES

A. Recitation of the issues

We recite Higgins's six issues as he composed and included them in his brief:

- 1. The State of Mississippi failed to prove that the crime as so described in the indictment occurred in Warren County, Mississippi.**
- 2. That there is a misjoinder of defendants in that the corporat[ion], Delta Glass Repair, Incorporated, was not indicted and further the State failed in its burden of proof to prove beyond a reasonable doubt that Patrick Higgins was in fact the person who signed the checks in question.**
- 3. That the court erred in allowing hearsay testimony; that is the witnesses to describe how UPS conducts [its] business and further how one witness was allowed to testify that the wife of Patrick Higgins told her that his son was a junior.**
- 4. That the court erred in not granting a judgment of acquittal to the defendant, Patrick Higgins, when the State introduced evidence from the bank records and in which the banker clearly stated that he never notified the corporation or Patrick Higgins that the account was closed and that there was no fraudulent intent upon Patrick Higgins.**
- 5. That the court erred in quashing two of Patrick Higgins's subpoenas, one to the Secretary of State and one to the Chancery Clerk's office violative of his constitutional rights per the Mississippi Constitution for compulsory process and per the United States Constitution.**
- 6. That the statutory presumption of fraudulent intent is unconstitutional and that Patrick Higgins personally never received any notice to him as mandated by Miss. Code Ann., Section 97-19-57.**

Because this Court agrees with Higgins that "the State failed in its burden of proof to prove beyond a reasonable doubt that Patrick Higgins was in fact the person who signed [and delivered] the checks," an argument that is the equivalent of asserting that the evidence was insufficient to support the jury's verdict of Higgins's guilt of all three counts contained in the indictment on which the State tried him, we need review no other issue.

B. Standard of review

In *Brooks v. State*, 695 So. 2d 593, 594 (Miss. 1997), the Mississippi Supreme Court again recited the following standard of review to be "applied when the assignment of error turns on the sufficiency of evidence":

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence -- not just that supporting the case for the prosecution -- in the light most consistent with the verdict. We give the prosecution the benefit of all inferences that

may reasonably be drawn from the evidence. If the facts and inferences so considered point[] in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is beyond our authority to disturb.

(citations omitted). This standard of review permits this Court to reverse the trial court's judgment of Higgins's guilt of three counts of "bad check fraud," only if it can say that "the facts and inferences [in the case *sub judice*] so considered point[] in favor of [Higgins] with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty" *See Brooks*, 695 So. 2d at 594. However, if this Court is persuaded that the evidence lacked that sufficient force, then "reversal and discharge are required." *See id.*

"[I]n a criminal prosecution, the State has the burden of proving beyond a reasonable doubt each element of the offense charged." *Bullock v. State*, 447 So. 2d 1284, 1286 (Miss. 1984). In *Bullock*, the issue was whether the State's evidence sufficiently established the crime of cattle theft apart from the appellants' confession to the crime. *Id.* at 1285. The appellants maintained "that the state utterly failed to meet its burden of proving the elements of the crime charged beyond a reasonable doubt." *Id.* at 1285-86. The supreme court held that the State had failed to prove the elements of cattle theft beyond a reasonable doubt without their confessions. *Id.* at 1287. The supreme court explained:

Once the jury has returned a verdict of guilty in a criminal case, we have no authority to order discharge of the defendant unless the evidence, taken in the light most favorable to the verdict, is such that on one or more elements of the offense charged, no reasonable hypothetical juror could have found against the defendant beyond a reasonable doubt.

On the other hand, where the evidence is such that on one or more elements of the offense charged no reasonable hypothetical juror could have resolved the issue against the defendant beyond a reasonable doubt, we have no authority to affirm. In that event, it becomes our duty to order that the defendant be discharged.

Id. at 1286-87 (citations omitted).

C. Elements of bad check fraud established by Section 97-19-53

Section 97-19-55 of the Mississippi Code of 1972 makes it unlawful "for any person with fraudulent intent to make, draw, issue, . . . or deliver any check . . . for the payment of money drawn on any bank . . . for the purpose of obtaining . . . any article of value . . . knowing at the time of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank" **Miss. Code Ann. § 97-19-55 (Rev. 1994)**. A fundamental element of the State's burden of proof in the case *sub judice* was to establish that Higgins was the person who made and delivered the three checks for which the grand jury had indicted him.

We have quoted at length from the transcript of the testimony in this case to demonstrate that two of

the State's witnesses, Joan Hart and James E. Stirgus, Jr., both testified under Higgins's cross-examination that they did not know who had written and delivered the three checks. Andrea Hunter could only testify in response to Higgins's cross-examination that "Number one, you never told me that it wasn't your signature." We again recite this snippet of her cross-examination by Higgins:

Q. Did I ever tell you that I signed those checks?

A. Not that I remember.

Q. So the truth of the matter is you don't know who wrote those checks, or who signed them--personal knowledge?

A. I did not see you write the checks. No.

No witness was able to identify the signatures on the three checks as Higgins's. Ms. Hart, Southern's credit manager, could only establish that she sent the merchandise to the address of 106 Linda Drive, Vicksburg, Mississippi 39180, which was the address of Higgins's family's residence in Vicksburg.⁽⁵⁾ The most that Ms. Hunter, the employee of the district attorney's office, could establish was that Higgins had talked to her about satisfying Delta's debt to Southern which the checks returned by FNBV to Southern had created. It is not reasonable to infer that Higgins had made, issued, and delivered any of the three checks from Ms. Hunter's testimony that Higgins did not tell her that the signatures were not his. Especially should this be true since she admitted that she could not remember if Higgins ever told her that he had signed any of the checks.

In our inclusion of the trial judge's opinion denying Higgins's motion for a directed verdict which he made after the State had rested its case, we emphasized his language that "the statute puts upon the defendant the presumption that . . . the checks were indeed written by the defendant." It is correct that Section 97-19-62(1) of the Mississippi Code of 1972 provides:

In any prosecution or action under the provisions of section 97-19-55, a check, draft or order for which the information required in subsections (2) and (3) of this section is available at the time of issuance, utterance or delivery shall constitute prima facie evidence of the identity of the party issuing, uttering or delivering the check, draft or order and that such person was a party authorized to draw upon the named account.

Miss. Code Ann. § 97-19-62(1) (Rev. 1994). However, to invoke "the prima facie evidence of the identity of the party issuing . . . or delivering the check . . . and that such person was a party authorized to draw upon the named account," the party who receives such check must request "[t]he presenter's name, residence address and home phone number," and

[i]n addition to the information required in subsection (2) of this section, the party receiving the check, draft or order shall witness the signature or endorsement of the party presenting such instrument and, as evidence of such, the receiving party shall initial the instrument.

Miss. Code Ann. § 97-19-62(2) - (3) (Rev. 1994).

The record in the case *sub judice* is devoid of any evidence that Ms. Hart, the credit manager for Southern, which received these three checks for which Higgins was indicted, attempted to comply in

any fashion with the requirements of Section 97-19-62(2) and (3) to invoke the "prima facie evidence of the identity of the party issuing, uttering or delivering the check" provision which Section 97-19-62(1) contains. Thus, because the State provided no evidence from which to invoke the provisions of Section 97-19-62, we decline to accept the trial judge's opinion that "the statute puts upon the defendant the presumption that . . . the checks were indeed written by the defendant."

D. Summary of the issue

The State bore the burden of proving the identity of the maker and drawer of the three checks for which Higgins was tried. Two of the three State's witnesses admitted that they did not know who made and delivered these checks, and the testimony of its third witness, Ms. Hunter, hardly established that Higgins had written and delivered the checks. Because there was no evidence that Higgins was the person who had written and delivered these checks, "no reasonable hypothetical juror could have resolved the issue [of whether Higgins had written and delivered the three checks in question] against [him] beyond a reasonable doubt. Thus, the standard of review gives this court "no authority to affirm" the trial court's judgment of Higgins's guilt and its sentences, and it therefore "becomes our duty to order that [Higgins] be discharged." *See Bullock, 447 So. 2d at 1287*. This Court accordingly reverses and renders the trial court's judgment of Higgins's guilt of three counts of bad check fraud and its sentences for those convictions.

THE JUDGMENT OF THE WARREN COUNTY CIRCUIT COURT OF CONVICTION OF THREE COUNTS OF FELONY BAD CHECK AND SENTENCES WHICH IT IMPOSED ON THE APPELLANT ARE REVERSED AND APPELLANT DISCHARGED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO WARREN COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

1. Section 97-19-55 provides:

It shall be unlawful for any person with fraudulent intent to make, draw, issue, utter or deliver any check, draft or order for the payment of money drawn on any bank, corporation, firm or person for the purpose of obtaining money, services or any article of value, or for the purpose of satisfying a preexisting debt or making a payment or payments on a past due account or accounts, knowing at the time of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft or order in full, and all other checks, drafts or orders upon such funds then outstanding.

Miss. Code Ann. § 97-19-55 (Rev. 1994).

2. Section 97-19-67 (c) and (d) prescribe the following sentences:

(c) Upon commission of a third or any subsequent offense of violating [Section 97-19-55], regardless of the amount of the check, draft or order involved, and regardless of the amount of the checks, drafts or orders involved in the prior convictions, the person committing such

offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) nor more than five (5) years.

(d) Where the check, draft or order involved shall be One Hundred Dollars (\$100.00) or more, the person committing such offense, whether same be a first or second offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the State Penitentiary for a term of not more than three (3) years, or by both such fine and imprisonment, in the discretion of the court. Upon conviction of a third or any subsequent offense, the person convicted shall be punished as is provided in the immediately preceding paragraph hereof.

Miss. Code Ann. § 97-19-67(c) - (d) (Rev. 1994).

3. Hart testified that she sent the three letters to the address of 106 Linda Drive, Vicksburg, Mississippi, but the return receipt and receipt for certified mail contains the address of P. O. Box 820651, Vicksburg, MS 39182. When the State inquired of Ms. Hart on direct examination, "[a]nd where did that address come from?" Ms. Hart explained, "That was probably on one of his checks."

4. The record reflects that while Higgins conducted his own defense, a member of the Vicksburg Bar sat with him and advised him during the trial. The record lists this attorney as "Legal Advisor."

5. The record might not contain this information had not the trial judge asked Higgins during the course of the trial if that was his home address.